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The Normativity of Human Rights Is Self-Evident

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ABSTRACT

Attempts to justify human rights in terms of other sources of normativity unwittingly weaken the case of human rights. Instead these rights should be treated as moral causes that speak to us directly, as one of those rare precepts that are self-evident. All will hear self-evident moral claims unless they have been severely distracted, and even these persons will hear these claims once they are engaged in open moral dialogue. Oddly, the strongest support for treating human rights as self-evident may well be a consequentialist argument.

I. INTRODUCTION

Numerous attempts have been made to justify human rights in terms of other sources of normativity, or values that can be used to justify these rights. This article suggests that such attempts unwittingly weaken the case of human rights and that instead these rights should be treated as moral causes that speak to us directly, as one of those rare precepts that is self-evident.¹ Suggesting that human rights should be treated as self-evident does not deny

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1. I am not the first to describe human rights as a "self-evident" moral claim. See, e.g., LOUIS HENKIN, *THE AGE OF RIGHTS* 2 (1990).

the value of examining their historical sources, nor the need to spell out what they entail; it merely contends that attempts to support human rights by inserting a foundation underneath them end up undermining their construction. Human rights stand tall on their own.

II. WEAKENING JUSTIFICATIONS

Michael Ignatieff complains that many human rights advocates in the West have conceded too much ground to challenges of the universality of human rights. He bemoans what he sees as a “desire to water down the individualism of rights discourse.”² But to strip human rights of their individualism, he argues, is to strip them of their ultimate justification—the preservation of individual agency. Ignatieff states: “[r]ights are universal because they define the universal interests of the powerless—namely, that power be exercised over them in ways that respect their autonomy as agents.”³ This justification raises more questions than it answers. For instance, are those who are not powerless not entitled to have their rights respected? All such arguments do is move that which needs to be justified over by one notch, relying for support on concepts such as agency, whose normativity is less compelling than that which they are supposed to support—human rights.

Several influential historical writings that prefigure contemporary human rights discourse derived human rights from natural law. In his *Second Treatise on Government*, John Locke claimed:

The state of nature has a law of nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions.⁴

But natural law has long been recognized as a particularly opaque concept. Oliver Wendell Holmes characterized it disparagingly as “a brooding omnipresence in the sky.”⁵ More recently, legal philosopher Michael S. Moore quipped that natural law theories are “rather like the northern lights . . . but without the lights.”⁶ In short, the concept of natural law calls for much more explication and, at least in this day and age, is inherently much less compelling than human rights.

2. Michael Ignatieff, *The Attack on Human Rights*, 80 FOREIGN AFF. 102, 108 (2001).

3. *Id.* at 109.

4. JOHN LOCKE, *SECOND TREATISE ON GOVERNMENT* 9 (C.B. Macpherson ed., Hackett Publ’g 1980) (1690) (emphasis omitted).

5. *S. Pac. Co. v. Jensen*, 244 U.S. 205, 222 (1917) (Holmes, J., dissenting).

6. Michael S. Moore, *Law as a Functional Kind*, in NATURAL LAW THEORY 188, 188 (Robert P. George ed., 1992) (commenting on Justice Holmes’s remarks, *supra* note 5).

Some scholars have argued for human rights as a necessary precondition for other values. Joel Feinberg, for instance, argues that human rights must exist because they are a necessary precondition for self respect, respect for others, and personal dignity.⁷ Similarly, one foundational human rights document states that rights “derive from the inherent dignity of the human person.”⁸ Like other attempts to base the normativity of a given moral claim on its service to other causes, this endeavor ends up making the moral claim contingent; human rights are justified *only as long as they serve*. If one can show that human rights are not necessary for, say, respect for others, then they lose their normative standing.

Furthermore, it is far from obvious that “self-respect” has a higher, clearer, or more compelling moral standing than human rights. The claims implicated by respecting human rights—that human beings have a right not to be killed, maimed, or tortured—are much more sharply etched and less open to subjective interpretation than the respect of “human dignity.” Many devout people hold that human dignity requires shrouding women, preventing women from being educated, condemning homosexuals, avoiding critical thinking, and even committing “honor” killings. For example, Jack Donnelly writes that “in Islam, in the realm of human rights (read human dignity), what really matters is duty rather than rights, and whatever rights do exist are a consequence of one’s status or actions” in accordance with Islamic tradition.⁹ Additionally, Heiner Bielefeldt states that in the Cairo Declaration on Human Rights in Islam, the “[e]quality in dignity . . . asserted in the declaration, apparently does not amount to equal rights for women and men.”¹⁰ To use self-respect to justify human rights is like arguing that we should look after our children so that we shall sleep better at night. Once again, the proposed foundation is weaker than the structure it is meant to support.

Attempts to base human rights on rationality, the social contract, or some kind of Kantian imperative are all approaches that invite often repeated criticisms, which need not be repeated here.¹¹ An especially weak justification of the universality of human rights relies on the fact that a global normative consensus supports them. Actually, universal consensus on normative issues is extremely thin. The principle of retribution may be one limited area of

7. Joel Feinberg, *The Nature and Value of Rights*, in *THE PHILOSOPHY OF HUMAN RIGHTS* 174, 182 (Patrick Hayden ed., 2001).

8. International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res 2200 (XXI), U.N.GAOR, 21st Sess., pmbL., U.N.Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976).

9. Jack Donnelly, *Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights*, 76 *AM. POL. SCI. REV.* 303, 307 (1982).

10. Heiner Bielefeldt, *Muslim Voices in the Human Rights Debate*, 17 *HUM. RTS. Q.* 587, 605 (1995).

11. See, e.g., ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (1984).

consensus. In that context, one study has demonstrated that retribution tied to proportionality is widespread.¹² Although consensus is politically beneficial, it is morally dubious; many people can and do agree on positions that are not morally justified. Thus, sixty years ago there was broad consensus across the world—especially in closed societies, and among those of closed minds—that women were at best a second class of citizens.¹³ Moreover, predicating the legitimacy of human rights on global consensus grants *de facto* veto power to outlier countries. If, say, Myanmar and North Korea do not share in the global respect for human rights, then their stance should hardly be taken as a challenge to the normativity of these rights.

In sum, attempts to undergird human rights with constructions that need more support than the rights themselves are not beneficial.

III. HUMAN RIGHTS ARE SELF-EVIDENT

Human rights are best recognized as one of the rare moral precepts whose normativity is self-evident. Human rights speak to us directly in a compelling manner, unmitigated by other causes.¹⁴ It should be noted that, while the founding fathers of the United States spoke of “self-evident truths,” this article deliberately avoids invoking the term “truth.” That term implies, at least in a contemporary context, a logical, empirical, objective, or scientific validity that differs from the axiomatic nature of self-evident precepts. “Truth” concerns “is” statements, while this article deals with “ought” statements. This article avoids the term “moral truth” because it evokes efforts, like those of David Hume, that seek to base morality on objective foundations.¹⁵ In contrast, the claim that the normativity of human rights is self-evident indicates that they are inherently morally compelling rather than based on some empirical or logical exterior judgments.

Self-evident moral precepts compose a small category of moral claims. Other than human rights, there are not many precepts for which one can credibly make such a claim. Another example of a moral claim that speaks for itself is the dictum that we have higher obligations to our own children than to the children of all others. When evaluating this claim, one does not

12. ALISON DUNDES RENTELN, *INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VERSUS RELATIVISM* 88–137 (1990).

13. RHODA E. HOWARD, *HUMAN RIGHTS AND THE SEARCH FOR COMMUNITY* 142 (1995).

14. It might be said that I argue that human rights need no case to be made for them, but I am making one: against those who seek to support human rights by basing them on other concepts.

15. See DAVID HUME, *ENQUIRIES CONCERNING HUMAN UNDERSTANDING AND CONCERNING THE PRINCIPLES OF MORALS* (L.A. Selby-Bigge & P.H. Nidditch eds., Oxford Univ. Press 3d ed. 1975) (1777); DAVID HUME, *A TREATISE OF HUMAN NATURE* (L.A. Selby-Bigge & P.H. Nidditch eds., Oxford Univ. Press 2d ed. 1978) (1739–40).

sense that there is a need for a consequentialist explanation, a calculus of harm, or some other form of utilitarian analysis and justification. The observation is not based on the fact that there is very wide consensus on this point. Rather, when one evaluates this claim, the answer is obvious; one does not sense a need for an explanation.¹⁶ To put it in more metaphorical terms, some lights shine so brightly that one hardly needs to point them out—unless one's vision is blocked, a point explored below.

I conducted an informal study in several countries with audiences of more than four hundred people of different social, intellectual, and political backgrounds and persuasions. In each case, I asked the group to pretend that they were a public school committee that must decide what values to teach in the third grade next year. First, I pointed out that it is impossible to formulate a value-free or neutral curriculum about most matters. Whatever one teaches about slavery, the Holocaust, or Washington's cherry tree will have implied moral judgments, including of course if one tries to objectively present both sides. Next, I asked the various audiences if one should teach that truth-telling is superior to lying, or vice versa, under all but limited conditions, such as when someone is dying from cancer and asks if there is any hope left. Without exception the groups looked puzzled. They wondered: "where was the question I said I would ask?;" "was there something else I meant to ask and did not?;" "why, the answer to the question I did ask was self-evident!"

None of the members of the groups I queried engaged in any kind of philosophical argumentation, such as "if one tells a lie, soon others will do the same, and then we shall find ourselves in a world of liars, a world we do not wish to live in; therefore, we must not lie." They did not require such a utilitarian, consequentialist explanation.¹⁷ Instead, they found the answer staring them in the face, speaking directly to them. Similarly, when people are asked if one should be free from the fear of death and torture, or have a right to meet with others, or have a right to practice one's religion, they readily recognize the value of such rights—at least, where their vision is not obscured.

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16. Peter Singer may be the only one who contests this point. He writes famously: "if I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out . . . It makes no moral difference whether the person I can help is a neighbor's child ten yards from me or a Bengali whose name I shall never know, ten thousand miles away." Peter Singer, *Famine, Affluence, and Morality*, 1 *PHIL. & PUB. AFF.* 229, 231–32 (1972). For a more detailed refutation of Singer on this point, see Amitai Etzioni, *Are Particularistic Obligations Justified? A Communitarian Examination*, 64 *REV. POL.* 573 (2002).
 17. Some added arguments as an afterthought, to examine and account for a moral sense which they already recognized. In other words, this is where ethics and moral philosophy comes in.

That some regimes do not observe many human rights does not challenge their status as self-evident moral claims.¹⁸ To hold that the normativity of human rights is self-evident does not involve the assumption that they are self-enforcing, self-implementing, or omnipotent. Rather, human rights constitute claims that all regimes face, whether or not the regimes have yet learned to abide by them.

That some select moral causes present themselves to us as compelling supports something similar to what religious authorities speak of as revelation. Importantly, in both religious and secular realms, drawing on such a source does not entail adopting a blind faith in that source; it does not mean that one cannot also *reason* about these matters. The fact that some cause is compelling does not prevent its examination. Here, reason follows, buttresses, or challenges revelation, rather than being the source of judgment.¹⁹

The dictum that “it is better to let a thousand guilty people walk free rather than hang one innocent person,” may initially seem self-evident. However, when one then notes that these freed criminals are sure to kill at least several innocent people, one finds that the certitude of the initial statement is no longer as strong as it seemed at first blush. In contrast, when one learns that a person reacted to a crime by engaging in revenge, the dictum “two wrongs do not make a right” stands, even after examined.

Charles Taylor writes about this dual nature of morality:

[O]ur moral reactions in this domain have two facets, as it were. On one side, they are almost like instincts, comparable to our love of sweet things, or our aversion to nauseous substances, or our fear of falling; on the other, they seem to involve claims, implicit or explicit, about the nature and status of human beings.²⁰

Naturalists and emotivists, Taylor argues, want to forget about the second part;²¹ true enough, but it would equally be a mistake to forget about the first part. One must keep in mind that rational explanations of normativity are attempts to, as Taylor puts it, “articulate” the moral sense, but are not its essence.²²

18. HENKIN, *supra* note 1, at 26–29.

19. Epistemologist Robert Audi writes that “since premises are not needed as a ground for justified belief of a self-evident proposition, there is also no basis for demanding an independent argument in every case where there is an appeal to the self-evident.” Robert Audi, *Self-Evidence*, 13 *PHIL. PERSP.* 205, 223 (1999).

20. CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY* 5 (1989).

21. *Id.* at 5–8.

22. *Id.* at 7.

IV. HUMAN RIGHTS AS A PRIMARY CONCEPT

All systems of thought, whether mathematical, scientific, religious, or moral, require at least one starting point—a primary or axiomatic concept or assumption that we must take for granted. Many philosophers who are critical of the notion of self-evident moral claims may well agree that every moral argument ultimately draws on one or more *a priori* premises,²³ that there are inevitably premises for which one cannot ask for further foundations—what Alvin Plantinga calls “properly basic beliefs.”²⁴

In the Jewish tradition, this need to have such a moral anchoring point is expressed in the idea that “every tong is made by a prior tong.” For many religions, God is this primary cause. For those who believe, God’s commandments, as expressed in tablets, texts, or as interpreted and explained by God’s delegates, identify which acts are moral and which are not. But for those who do not recognize God as a compelling primary source of normativity, the various do’s and do not’s based on his word do not hold. Other systems of thought employ nature or reason as their primary concept, fulfilling a role analogous to that played by God’s commandments in religious systems. Every sustainable moral construction builds on a self-evident foundation.²⁵ Human rights are the primary normative concept for the construction of international law and norms.

V. MORAL DIALOGUES AND THE OPENING EFFECT

A critic may suggest that the concept of self-evident moral claims amounts to an assertion that one moral intuition is better than all others. However, the opposite is the case. All persons will hear self-evident moral claims unless they have been severely distracted, and even these persons will hear these claims once they are engaged in open moral dialogue. Drawing on the work of Martin Buber, moral dialogues are conversations about values, as opposed to deliberations driven by fact and logic, in which we truly open up to each other and, in the process, become open to self-evident moral precepts.²⁶

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23. Michael P. Zuckert argues that Jefferson, following John Locke and others, took self-evident truths to “serve as the most fundamental sort of premise, what in mathematics are called axioms.” Michael P. Zuckert, *Self-Evident Truth and the Declaration of Independence*, 49 *REV. POL.* 319, 322 (1987).
 24. Alvin Plantinga, *Is Belief in God Rational?*, in *RATIONALITY AND RELIGIOUS BELIEF* 7, 19 (C. F. Delaney ed., 1979).
 25. See, e.g., BERNARD WILLIAMS, *TRUTH AND TRUTHFULNESS* 11 (2002). Williams argues that accuracy and sincerity are “virtues of truth.”
 26. See MARTIN BUBER, *I AND THOU* (Walter Kaufmann trans., Charles Scribner’s Sons 1970) (1923).

German sociologist and social theorist Hans Joas criticized the concept of self-evident moral precepts by suggesting that if these claims were truly self-evident, the founding fathers—and all others who evoke those precepts—would not have needed to proclaim them.²⁷ The fact that they did, Joas argues, constitutes *prima facie* evidence that these precepts are not self-evident.²⁸

Self-evident precepts may indeed elude people whose vision is obscured, either because they live in closed societies, such as fundamentalist theocracies or secular totalitarian states, or because they have closed minds even if they live in open societies. In the case of closed societies, social pressure and cultural indoctrination have risen to a level that people are unable to hear the normative voice of the moral causes at issue. In the case of open societies, people under the influence of one mind modifier or another, whether it is alcohol, drugs, or merely a high dose of mass culture, or those who are mentally handicapped, are blind to even the most shining normative light. However, even these people may be able to see the compelling nature of self-evident normative precepts when their societies open, when they are freed to participate in unencumbered moral dialogues, or when they learn to overcome their various mind and soul numbing addictions.

The preceding statement is supported by the observation that as totalitarian and authoritarian regimes such as Singapore and China open due to changes in their regimes and technological developments in the realm of communication, they also move towards recognizing human rights—often in word, but also in deed. These regimes, which once dismissed human rights as particularistic, Western notions not applicable to their people now increasingly pay homage to human rights in several ways. They abide by some rights more than they did previously, for example these regimes allow some free speech, and increasingly allow due process of law. These regimes also present various explanations for why their regimes cannot yet fully abide by human rights, but will do so in the future. They also hide the violations of rights, such as those of inmates. Thus, rather than maintain their original dismissive position, they increasingly accept the normativity of human rights.

Texts and narratives in non-Western cultures that support human rights, for instance those enumerated by Amartya Sen²⁹ and Abdullahi An-Na'im,³⁰ are also indications of a growing transcultural base of support. In contrast,

27. Interview with Hans Joas, Professor of Sociology, University of Chicago, in Berlin, Germany (1 June 2003).

28. *Id.*

29. Amartya Sen, *Human Rights and Asian Values*, *NEW REPUBLIC*, 14–21 July 1997, at 33.

30. *HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS* (Abdullahi Ahmed An-Na'im ed., 1992).

those places where religious fundamentalism is gaining the upper hand and moving to close societies and eliminate open dialogue lose sight of human rights.

Furthermore, while open dialogues among people in previously closed societies often move those people toward recognizing human rights, the opposite is not true. As champions of human rights hear from those that are dismissive of human rights, they are not won over. Belief systems that reject human rights rely on closed societies and closed minds to do so; all who are open find them compelling.

VI. SOCIAL CONSEQUENCES OF TREATING HUMAN RIGHTS AS SELF-EVIDENT

So far, the case against those who provide extraneous foundations to justify human rights has rested on the claim that human rights are self-evident. Oddly, the strongest support for treating them as one of those rare moral claims that are self-evident may well be a consequentialist argument. To argue that human rights are particular to a single culture and thus are self-evident to people from that culture, and to then assert that one should not render transnational moral judgments, greatly weakens the case for human rights and hinders their progress. In contrast, treating human rights as self-evident strengthens the case for human rights.

Social forces make people better or worse than they would be otherwise. A gang encourages its members to pursue anti-social behavior; a religious order encourages its members to pursue charity work. The same holds true across cultures. In response to reports by the global media that a state is violating the human rights of its people, many other states will modify their behavior, especially if such disclosures are followed by considerable and lasting international criticism and protests. True, in such cases, the parties involved may act largely out of self-interest by seeking to maintain a positive public image for political, commercial, or some other self-serving purpose. However, it is the loud and clear moral voices carried across borders that necessitate these actions and influence states' self-interest to improve their human rights record. The voices of these states' own people who come to see the normativity of human rights as they have access to open moral dialogues also necessitate this reform. If these voices are silenced or muted, the progress of human rights will be undermined.

While radical cultural relativism argues that we cannot and should not judge others, some moderate relativists hold that one is entitled to judge the policies of others, but not in universalistic terms. According to moderate relativists, one must merely express one's own culturally conditioned norma-

tive position and should recognize that people of other cultures may well justify conflicting positions by drawing on their own respective cultures.³¹

Although this position is not as preemptive as radical relativism, it still greatly undermines the very essence of the moral claim—the call for others to heed a given value. In rejecting the transcultural standing of the moral claim, even moderate relativists treat moral judgments like expressions of taste: “I like potatoes and recommend them to you, but you may well have strong reasons to prefer rice and I have no standing to complain about such a preference.” Such a move undermines moral claims because one makes them and grants those subject to them a license to ignore the moral claims in the same breath. Such hedged claims are like speeding tickets handed out to motorists together with the money to pay for them. Further, religious fundamentalists are not going to hedge their claims. Hence, by making our claims contingent and conditional, we yield part of the transcultural space for moral dialogues to those with unhinged voices. The world would be better off if our claims clashed with those of others in the agora of moral precepts, which would let those claims that are truly self-evident stand out.

It is odd to read the work of a major philosopher who argues that the universality and self-evidence of human rights cannot be sustained in part because Friedrich Nietzsche held that such claims “would only have crossed the mind of a slave” as a tool to enfeeble those in power.³² The notion that the issues at hand could be settled by quoting an authority is surprising. If I come back and quote Locke, John Stuart Mill, and maybe Immanuel Kant, would the matter be settled by the philosopher who ranks higher? By who garners more philosophical votes or citations? Note also that Nietzsche’s claim is an empirical one. Anyone who applies Nietzsche’s notions to the contemporary world must answer for the fact that many people who possess power do advocate for human rights, and many who are weak, but live in closed societies, have yet to recognize them.

Richard Rorty also argues for abandoning transcultural claims posed by human rights because racists and sexists find it easy to embrace these rights while denying that these rights apply to blacks, Jews, and women among others because they do not consider them human beings. It is not particularly difficult to show that the term “human”—those entitled to human rights—is easy to define as featherless bipeds. Under this definition, minorities and women clearly qualify.

The argument advanced in this article is not that one should claim a non-relativist status for human rights because such claims are beneficial, although those who subscribe to utilitarian, consequentialist doctrines might

31. See, e.g., *id.*; see also Stanley Fish, *Don't Blame Relativism*, 12 *RESPONSIVE COMMUNITY* 27 (2002).

32. Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *THE PHILOSOPHY OF HUMAN RIGHTS*, *supra* note 7, at 241, 254.

consider such a course.³³ Rather, given that human rights are a self-evident moral cause, giving these rights voice—allowing them to be carried across borders—would make for a better world, one that is more attentive to human rights and to other moral causes.

Moreover, without cross-cultural moral judgments one cannot reach the next step: asking what legitimate measures the inchoate global community should take to promote these judgments. Thus, key questions concerning the conditions under which it is appropriate to impose economic sanctions and, above all, to engage in armed humanitarian interventions are contingent on the recognition that there are actions taking place in another nation that violate human rights on a large scale. Only after such a conclusion is reached, can one logically ask about the legitimate ways the global community should react to such findings.

33. See, e.g., Dale Jamieson, *When Utilitarians Should Be Virtue Theorists*, 19 UTILITAS 160 (2007).